CITY OF LOUISVILLE *v.* CUMBERLAND TELEPHONE AND TELEGRAPH COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY.

No. 538. Argued November 10, 1913.—Decided January 5, 1914.

Decided on authority of *In re Louisville, ante,* p. 639.

THE facts are stated in the opinion.

Mr. Pendleton Beckley, with whom *Mr. J. W. S. Clements* and *Mr. Stuart Chevalier* were on the brief, for appellant.

Mr. Alexander P. Humphrey and *Mr. W. L. Granbery,* with whom *Mr. Hunt Chipley* was on the brief, for appellee.

MR. JUSTICE MCKENNA delivered the opinion of the court.

Appeal from the order of March 10, 1913, referred to in Nos. 11 and 12, Original, and which order it was the object of the petition for mandamus passed on in No. 11 to command the Judge of the District Court to vacate. The appeal also includes certain other orders which preceded the making of that order. The question, which is fundamental of all, is whether the decision and decree of this court set out in No. 11, Original, and the mandate issued thereon permitted further proceedings in the suit or necessarily required its dismissal. This is the general basis of the assignments of error, and as included in it, special objection is made to the instructions given the master in the orders appealed from, to the refusal of the court to order the Telephone Company to pay into court for immediate distribution among those entitled thereto, whatever sums the company collected in excess of the ordinance rates, and deciding instead that a bond should be required of the company for the restitution of the amounts if the ordinance rates should ultimately be held not to be confiscatory. These objections are repeated in the usual way of assignments of error.

The discretion vested in the court, we considered in No. 11, Original, and repetition would serve no purpose. For the reasons there given the order of the District Court is

Affirmed.